

1793
77.

Matthew Bogle, and William Robb, { Plaintiffs in
Error.

His Majesty's Advocate General for { Defendant in
Scotland, for his Majesty's Interest, { Error.

On a Writ of Error brought, returnable in Parliament, upon a
Judgment in the Court of Exchequer in *Scotland*.

The CASE of Defendant in Error.

Writ of
Scire facias.

ON the 26th July 1750, his Majesty's Writ of *Scire facias* issued for the
now Plaintiffs to shew Cause why Execution should not issue against them
for the Sum of 3,717*l.* 6*s.* 8*d.* being the Penalty of a Bond entered into, by
Defendants, to his Majesty, bearing Date 8th October 1747.

To this Writ the Defendants appeared, and craved Oyer of the above Bond, and
of the Condition thereof: Which is as follows;

" That if the said *Matthew Bogle*, and *William Robb*, their Executors, Admini-
strators, or Assigns, or any of them, do well and truly pay, or cause to be paid,
unto *James Murray*, Esq; Receiver-General of his Majesty's Customs, to the
Receiver-General for the Time being, or to any Person legally empowered to
receive the same, the Sum of 1,858*l.* 13*s.* 4*d.* lawful Money of *Great Britain*,
on or before the 8th Day of April 1749, being for the additional Duty, New
Subsidy, One-third Subsidy, and Imposit of an Entry made this Day for 98,400*lb.*
of *British* Plantation Tobacco, imported in the Ship *Rea Gally*, of *Glasgow*, *William*
Alexander Master, from *Virginia*, which entered the 5th of October 1747, at the
Custom-house in the Port of *Port-Glasgow*; then this Obligation to be void; other-
wise to remain in Force."

Plea.

The then Defendants, for Plea to the said Writ, say, That his Majesty ought not
to have Execution against them, for the said 3,717*l.* 6*s.* 8*d.* because the said Bond
was entered into by them for Security of the Payment of several Customs and Duties
due and payable to his Majesty upon 98,400*lb.* Weight of Tobacco, mentioned in the
Condition of the said Bond, and imported by them from *Virginia*, upon the 5th of
October 1747, into the Port of *Port-Glasgow*, in the Ship *Rea Gally* of *Glasgow*; and
that, by virtue of the Statute in that Case made and provided, they are allowed
Three Years time for the Exportation of the said Tobacco, from the said 5th
October 1747 (being the Time of the Importation thereof); and in that Case the
said Bond, by virtue of a proper Debenture or Debentures to be made forth, becomes
vacated: And that the aforesaid Quantity of 98,400*lb.* Weight of Tobacco was, in fact,
exported at different times, to Parts beyond the Seas, within Three Years from the time
of the Importation thereof; to wit, at *Leith*, in the County of *Edinburgh*: And that,
by proper Debentures made, in that behalf, by the proper Officers there, the said Bond
is thereby become vacated: Wherefore they pray Judgment of the said Writ of *Scire*
facias; and whether his Majesty ought to have Execution against them for said
3,717*l.* 6*s.* 8*d.* and that the said Bond might be cancelled, and delivered up to
them.

Demurrer
and Joinder.

To this Plea his Majesty's Advocate General demurred; and the Defendants joined
therein.

Judgment.

And, in February 1751, Judgment was given for his Majesty.

The Statutes material upon the present Question are, the Statute 4th Queen *Anne*,
Cap. 6. Sect. 35th: By which it is declared, That in case any Payment to incur and
grow due after the 6th Day of February 1705, by the Condition of any Bond taken,
or to be taken, for the Customs, additional Duties, Impositions, or other Duties, of
any Goods or Merchandizes imported, or thereafter to be imported, shall not be duly
paid, according to the Condition of every such Bond respectively; in all and every such
Case and Cases, the Penalty of every such Bond shall not be discharged, either in Law
or Equity, without the full Payment of the Principal Monies, together with Interest,
after the Rate of 6*l.* per Cent. per Annum, to be reckoned from the Day on which
such Principal Monies become due, until the actual Payment thereof, besides Costs of
Suit; unless the Lord Treasurer, or any Three or more of the Commissioners of the
Treasury

Treasury for the Time being, upon the Representation of the Commissioners of the Customs for the Time being, or any Three or more of them, shall judge it reasonable, in any particular Case or Cases, to remit the said Interest and Costs, or any Part thereof; this Act, or any other Law or Statute whatsoever, to the contrary notwithstanding.

Statute 7th *George I*st, Cap. 21st, Sect. 10th, recites, That by the Statute of the 4th of *William and Mary*, and by several other Statutes, the Exportation of foreign Goods imported was limited, as to some Sorts of such Goods, to 12 Months, others to 14 Months, and others to 18 Months, from the time of the Importation: And it being found, that those Times were too short, and inconvenient to Traders; and that it would be for the Benefit of the Trade of this Kingdom, if the Time given for Repayments, or Drawbacks, of the Duties upon the Exportation of all Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes should be enlarged; it Enacts, That the respective Times for Exportation of all Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes, as the same were then limited by any Law or Laws in being, shall, from and after the 24th Day of *June 1721*, be extended and enlarged, so that in all Cases where Repayments, Allowances, or Drawbacks, are made upon the Exportation of any Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes imported, and afterwards exported, by virtue of any Law then in Force, all Merchants and Traders, Bodies Politick, and Corporations, shall from thenceforth have and be allowed Three Years time, from the Importation of such Goods, to export the same, accounting such Importation from the Master's Report of the Ship. And all and every such Merchant and Merchants, Trader and Traders, Bodies Politick, and Corporations, shall have the like Repayments, Allowances, and Drawbacks by and for such Exportation, as if the same had been exported within the respective times before-mentioned, or any other times limited by any Law then in being for that Purpose; such Law, or any other Law, Rule, Custom, or Usage, to the contrary in any-wise notwithstanding. Provided nevertheless, That Certificates and Oaths be made, and all other Requisites performed, according to the Laws then in being, relating to the Importation or Exportation of such Goods.

By the Statute 9 *George I*. Sect. 3d, it is Enacted, That the several Duties upon Tobacco imported, after the 1st Day of *June 1723*, shall be raised, levied, collected and paid, during the Continuance thereof respectively, in the manner following; that is to say, The Importer of Tobacco of the *British* Plantations shall, on the Importation thereof, pay down the Old Subsidy of One Penny per Pound, with an Allowance of 25 per Cent. instead of the former Allowance of 5 l. per Cent.; and that all the other Duties on such Tobacco imported, amounting together to 5 d. and One Third of a Penny per Pound, shall be paid down, or the Importer thereof shall become bound to his Majesty, his Heirs and Successors, with One or more sufficient Sureties, to be approved of by the Collector of the Port where the Tobacco shall be imported, with the Consent of the Comptroller of such Port, in One or more Bond or Bonds, at the Election of the Importer, for Payment of the respective Duties within 18 Months, to commence at the End of 30 Days after the Master's Report of the Ship, or to commence from the Merchant's Entry of the Goods within 30 Days, which shall first happen: And that, in lieu of all former Encouragements, Allowance for Wages or Damage, or other Allowances and Discounts for prompt Payment (all which Encouragements, Allowances, and Discounts, are repealed and abrogated), One Allowance of 25 per Cent. of the said Duties, amounting to 5 d. and One Third of a Penny per Pound, shall be deducted, and allowed, upon the Entry of the Importer paying down the said Duties; and every Importer, not paying down the said Duties shall have an Allowance only of 15 per Cent.; any Law, Custom, or Usage, to the contrary notwithstanding.

And, by Sect. 6th of the same Statute, it is Enacted, That in case any of the said Tobacco, which shall have been entered, and the Duties thereof paid or secured, in manner by this Act directed and appointed, shall, from and after the said 1st Day of *June 1723*, be exported into any foreign Parts, the Exporter shall, upon the Exportation thereof within the time limited by Law, on a proper Debenture to be made for that Purpose, be paid, or allowed to drawback, the whole Duty, or the Security vacated on the Bond or Bonds given on the Importation, and no more, as to what shall be so exported; care being taken, that the several Allowances and Deductions made

made at the Importation be again deducted on the Debenture; any Law or Custom to the contrary notwithstanding.

By the Statute of 24 Geo. II. it is Recited, That some Doubts had arisen, whether the Bonds which were given to the Crown, for the Payment of the several and respective Duties on Tobacco within 18 Months, as the Law directs, ought, on the Expiration of the said 18 Months, to be put in Suit; and whether any Interest should accrue thereon to the Crown, from and after the Expiration of the said 18 Months, until the said Bonds should be vacated, by a proper Debenture, to be made out for that Purpose, inasmuch as the Exporter, upon the Exportation of the Tobacco within the time limited by Law, which was Three Years, was to be paid, or allowed to drawback, the whole Duty, or the Security vacated on the Bond or Bonds given on the Importation of the same Tobacco: To remove all such Doubts for the future, it is Declared and Enacted, That all Bonds which had been given, and were subsisting, at the time of making that Act, for the several and respective Duties on Tobacco, or which should thereafter be given for the Payment of the said Duties, shall be deemed and taken to be due and payable immediately upon the Day mentioned in the Condition of the said Bond for Payment thereof; and that such Interest shall be paid to the Crown on all such Bonds, as is directed by the said Act of the 4th of her late Majesty Queen Anne; which Interest shall be computed from the Day the Bond becomes due, to the Day whereon it shall be paid off in Money, or the Day the Searcher certifies upon the Debenture, That the Tobacco was shipped for Exportation, notwithstanding such Tobacco doth or shall remain unexported, and the Three Years (being the time limited for the Allowance of the Drawback on Exportation) shall not be expired; and no such Security shall thereafter be vacated until all such Interest shall be paid thereon; any Law, Usage, or Custom, to the contrary notwithstanding.

The Bond in question being given for Payment of the Duty on Tobacco, at the End of 18 Months, according to the Directions of the above Statute; and it not appearing, that the Tobacco imported by the Plaintiffs was exported before that Time elapsed, the Bond became forfeited, and the Judgment given for the Crown therefore right; and ought to be affirmed, for the following, and many other,

R E A S O N S:

- I. For that the Duty became due, by virtue of the Bond, at the End of the 18 Months; and tho' Three Years time is given, by the Law, for liberty of re-exporting, yet that is not inconsistent with the Payment of the Money before that time, any more than the actual Payment of the Old Subsidy.
- II. That as to the Pretence of an Exportation within the Three Years, the Plea does not aver it; but only that the aforesaid Quantity of Tobacco was exported, where the Certainty refers to the Quantity only, and not to the Identity, of the Tobacco; which might have been of a different Importation, and yet consistent with the Expression used in the Plea.
- III. That if the same Tobacco had been alleged to be exported; yet the Plaintiffs in Error would not have been intitled to have the Bond vacated, without paying Interest to the Crown from the time the Bond became due until the Exportation; the Law expressly giving Interest to the Crown for all Bonds for Customs from the time they become due; and by the express Words of the late Act, of the 24th of his present Majesty, this is declared to be the Law.
- IV. For that the Plea of the Plaintiffs in Error is not issuable; the several Times when the Tobacco was pretended to be exported not being set forth, and the several Debentures, by which the Plaintiff would have become intitled to have his Bond vacated, not being stated or averred, and no Tender or Offer of such Debentures to the Officer who should have vacated the Bond being averred to be made.

D. RYDER.
W. GRANT.
W. MURRAY.

Treasury for the Time being, upon the Representation of the Commissioners of the Customs for the Time being, or any Three or more of them, shall judge it reasonable, in any particular Case or Cases, to remit the said Interest and Costs, or any Part thereof; this Act, or any other Law or Statute whatsoever, to the contrary notwithstanding.

Statute 7th *George I*st, Cap. 21st, Sect. 10th, recites, That by the Statute of the 4th of *William and Mary*, and by several other Statutes, the Exportation of foreign Goods imported was limited, as to some Sorts of such Goods, to 12 Months, others to 15 Months, and others to 18 Months, from the time of the Importation: And it being found, that those Times were too short, and inconvenient to Traders; and that it would be for the Benefit of the Trade of this Kingdom, if the Time given for Repayments, or Drawbacks, of the Duties upon the Exportation of all Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes, should be enlarged; it Enacts, That the respective Times for Exportation of all Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes, as the same were then limited by any Law or Laws in being, shall, from and after the 24th Day of *June* 1721, be extended and enlarged, so that in all Cases where Repayments, Allowances, or Drawbacks, are made upon the Exportation of any Goods and Merchandizes of his Majesty's Plantations, and all other foreign Goods and Merchandizes imported, and afterwards exported, by virtue of any Law then in Force, all Merchants and Traders, Bodies Politick, and Corporations, shall from thenceforth have and be allowed Three Years time, from the Importation of such Goods, to export the same, accounting such Importation from the Master's Report of the Ship: And all and every such Merchant and Merchants, Trader and Traders, Bodies Politick, and Corporations, shall have the like Repayments, Allowances, and Drawbacks, by and for such Exportation, as if the same had been exported within the respective times before-mentioned, or any other times limited by any Law then in being for that Purpose; such Law, or any other Law, Rule, Custom, or Usage, to the contrary in any-wise notwithstanding. Provided nevertheless, That Certificates and Oaths be made, and all other Requisites performed, according to the Laws then in being, relating to the Importation or Exportation of such Goods.

By the Statute 9 *George I*. Sect. 3d, it is Enacted, That the several Duties upon Tobacco imported, after the 1st Day of *June* 1723, shall be raised, levied, collected, and paid, during the Continuance thereof respectively, in the manner following; that is to say, The Importer of Tobacco of the *British* Plantations shall, on the Importation thereof, pay down the Old Subsidy of One Penny *per* Pound, with an Allowance of 25 *per Cent.* instead of the former Allowance of 5 *l. per Cent.*; and that all the other Duties on such Tobacco imported, amounting together to 5 *d.* and One Third of a Penny *per* Pound, shall be paid down, or the Importer thereof shall become bound to his Majesty, his Heirs and Successors, with One or more sufficient Sureties, to be approved of by the Collector of the Port where the Tobacco shall be imported, with the Consent of the Comptroller of such Port, in One or more Bond or Bonds, at the Election of the Importer, for Payment of the respective Duties within 18 Months, to commence at the End of 30 Days after the Master's Report of the Ship, or to commence from the Merchant's Entry of the Goods within 30 Days, which shall first happen: And that, in lieu of all former Encouragements, Allowance for Waste or Damage, or other Allowances and Discounts for prompt Payment (all which Encouragements, Allowances, and Discounts, are repealed and abrogated), One Allowance of 25 *per Cent.* of the said Duties, amounting to 5 *d.* and One Third of a Penny *per* Pound, shall be deducted, and allowed, upon the Entry of the Importer paying down the said Duties; and every Importer, not paying down the said Duties, shall have an Allowance only of 15 *per Cent.*; any Law, Custom, or Usage, to the contrary notwithstanding.

And, by Sect. 6th of the same Statute, it is Enacted, That in case any of the said Tobacco, which shall have been entered, and the Duties thereof paid or secured, in manner by this Act directed and appointed, shall, from and after the said 1st Day of *June* 1723, be exported into any foreign Parts, the Exporter shall, upon the Exportation thereof within the time limited by Law, on a proper Debenture to be made forth for that Purpose, be paid, or allowed to drawback, the whole Duty, or the Security vacated on the Bond or Bonds given on the Importation, and no more, as to what shall be so exported; care being taken, that the several Allowances and Deductions made

[3]

made at the Importation be again deducted on the Debenture; any Law or Custom to the contrary notwithstanding.

By the Statute of 24 Geo. II. it is Recited, That some Doubts had arisen, whether the Bonds which were given to the Crown, for the Payment of the several and respective Duties on Tobacco within 18 Months, as the Law directs, ought, on the Expiration of the said 18 Months, to be put in Suit; and whether any Interest should accrue thereon to the Crown, from and after the Expiration of the said 18 Months, until the said Bonds should be vacated, by a proper Debenture, to be made out for that Purpose, inasmuch as the Exporter, upon the Exportation of the Tobacco within the time limited by Law, which was Three Years, was to be paid, or allowed to drawback, the whole Duty, or the Security vacated on the Bond or Bonds given on the Importation of the same Tobacco: To remove all such Doubts for the future, it is Declared and Enacted, That all Bonds which had been given, and were subsisting, at the time of making that Act, for the several and respective Duties on Tobacco, or which should thereafter be given for the Payment of the said Duties, shall be deemed and taken to be due and payable immediately upon the Day mentioned in the Condition of the said Bond for Payment thereof; and that such Interest shall be paid to the Crown on all such Bonds, as is directed by the said Act of the 4th of her late Majesty Queen Anne; which Interest shall be computed from the Day the Bond becomes due, to the Day whereon it shall be paid off in Money, or the Day the Searcher certifies upon the Debenture, That the Tobacco was shipped for Exportation, notwithstanding such Tobacco doth or shall remain unexported, and the Three Years (being the time limited for the Allowance of the Drawback on Exportation) shall not be expired; and no such Security shall thereafter be vacated until all such Interest shall be paid thereon; any Law, Usage, or Custom, to the contrary notwithstanding.

The Bond in question being given for Payment of the Duty on Tobacco, at the End of 18 Months, according to the Directions of the above Statute; and it not appearing, that the Tobacco imported by the Plaintiffs was exported before that Time elapsed, the Bond became forfeited, and the Judgment given for the Crown therefore right; and ought to be affirmed, for the following, and many other,

R E A S O N S:

- I. For that the Duty became due, by virtue of the Bond, at the End of the 18 Months; and tho' Three Years time is given, by the Law, for liberty of re-exporting, yet that is not inconsistent with the Payment of the Money before that time, any more than the actual Payment of the Old Subsidy.
- II. That as to the Pretence of an Exportation within the Three Years, the Plea does not aver it; but only that the aforesaid Quantity of Tobacco was exported, where the Certainty refers to the Quantity only, and not to the Identity, of the Tobacco; which might have been of a different Importation, and yet consistent with the Expression used in the Plea.
- III. That if the same Tobacco had been alleged to be exported; yet the Plaintiffs in Error would not have been intitled to have the Bond vacated, without paying Interest to the Crown from the time the Bond became due until the Exportation; the Law expressly giving Interest to the Crown for all Bonds for Customs from the time they become due; and by the express Words of the late Act, of the 24th of his present Majesty, this is declared to be the Law.
- IV. For that the Plea of the Plaintiffs in Error is not issuable; the several Times when the Tobacco was pretended to be exported not being set forth, and the several Debentures, by which the Plaintiff would have become intitled to have his Bond vacated, not being stated or averred, and no Tender or Offer of such Debentures to the Officer who should have vacated the Bond being averred to be made.

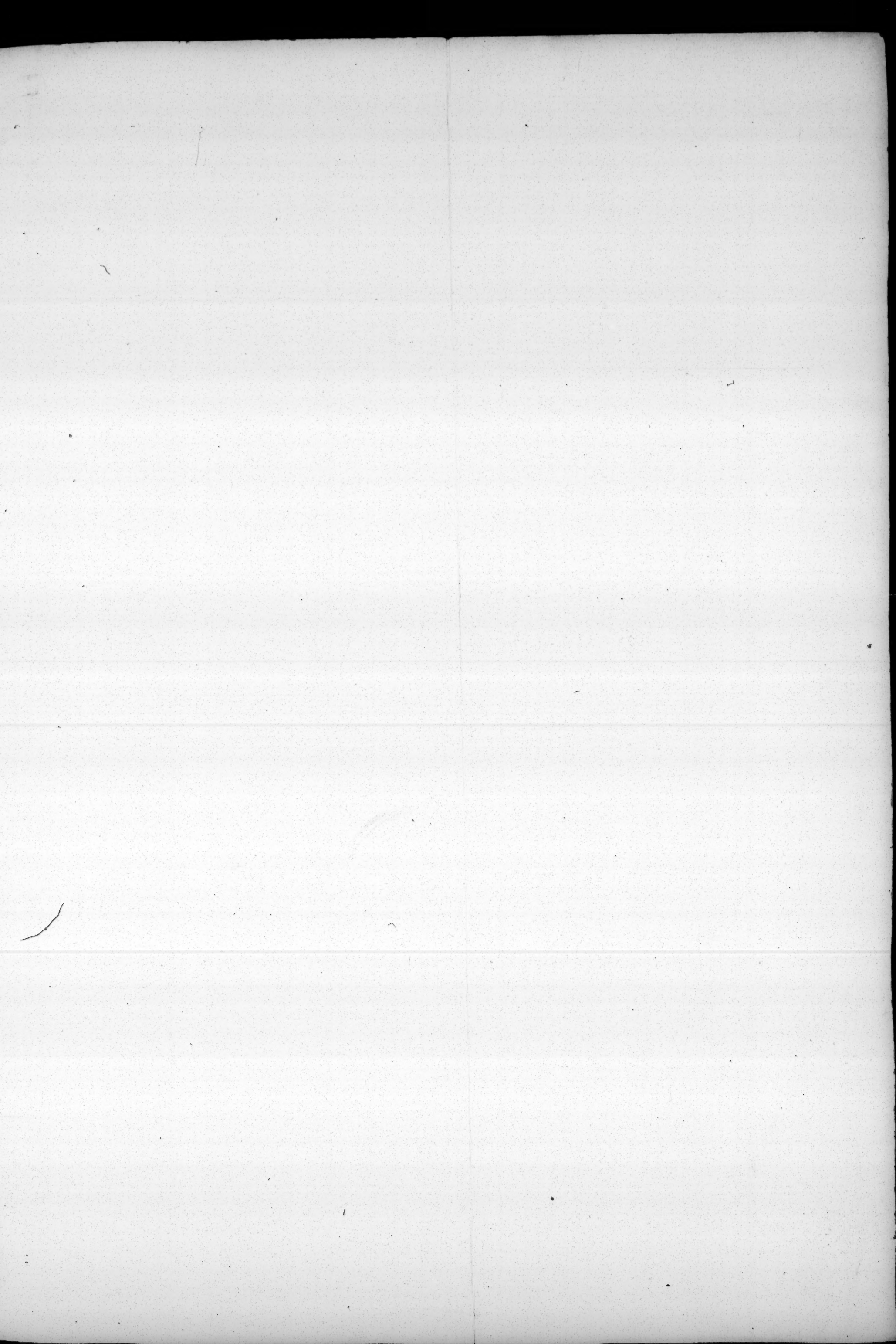
D. RYDER.
W. GRANT.
W. MURRAY.

Matthew Bogle, and } Plaintiffs in Error.
William Robb, }

His Majesty's Advocate General for
Scotland, for his } Defendant in Error.
Majesty's Interest,

The CASE of Defendant in Error.

Prised Another Judge
That the Judgment given
by the Lord of Buckhary
in Scotland be affirmed.
And that the Records
submitted to the Lord
Prosecutor may be read
thereupon as if the
Lord of Baw had been
Bogle in this Matter



4 f 2

Volyp 27

